Lenox Hill Hospital *and* The New York Professional Nurses Union. Case 02–CA–103901

February 12, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND MCFERRAN

On October 1, 2014, Administrative Law Judge Mindy E. Landow issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified[3] and set forth in full below.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

"3. By refusing to bargain collectively with the Union by failing and refusing to furnish it with the requested information and by unreasonably delaying in furnishing it with requested information as set forth in letters dated February 22, 27, and April 12, 2013 that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees, the Respondent has committed an

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] For the reasons stated by the judge, we affirm the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with the following information: statistics regarding the number of hours (and/or shifts) for nurses' aides working one-on-one assignments for the 6-month period preceding February 22, 2013; patient census reports from September 1, 2012 through February 22, 2013, for the units named in the Union's February 19, 2013 grievance alleging violations of art. XXVI of the parties' collective-bargaining agreement (the grievance); the FTE full complement standard (filled and unfilled positions) for registered nurses and nurses' aides for each unit named in the grievance; statistics detailing the number of overtime hours and shifts nurses' aides worked from September 2012 through February 22, 2013, for the units named in the grievance; the mean and mode hours between the time patients were given their discharge orders and when they actually left the hospital; and the number of times nurses' aides were pulled off units (including their own) to cover one-on-one assignments from September 1, 2012, through February 22, 2013.

As to the Union's request for the mean and mode hours between the time patients were given their discharge orders and when they actually left the hospital, we agree with the judge that this information is relevant because it directly relates to the calculation of the nurse-to-patient ratios. We further find that the judge properly rejected the Respondent's defenses that it was not required to furnish this information because it allegedly would be burdensome to provide and implicated confidentiality concerns. As explained by the judge, the Respondent was required to bargain with the Union towards an accommodation. See *Mission Foods*, 345 NLRB 788, 789 (2005); *International Protective Services*, 339 NLRB 701, 704–705 (2003). Additionally, we note that there is no evidence that the Union ever withdrew its request for this information. Contrary to his colleagues, Member Johnson would not find that the Respondent violated Sec. 8(a)(5) by failing and refusing to provide the mean and mode hours between the time patients were given their discharge orders and when they actually left the hospital. The Respondent's Director of Talent and Organizational Development Emily Weisenbach testified without contradiction that the parties discussed Respondent's position that it would be burdensome for the Respondent to review hundreds of patient medical files and that the Union's representative appeared satisfied with this explanation. In Member Johnson's view, the duty to act in good faith covers both parties involved in an information request and thus required the Union, for this particular request in these circumstances, to clarify that it did not agree with Respondent's position on burdensomeness. Requiring the Respondent instead to demand and receive a formalistic "withdrawal" of the request by the Union, as the majority would want in these circumstances, elevates form over substance. That approach disserves our role in creating and regulating a functional bargaining process that parties can realistically operate within to reach agreement and thus enhance labor peace.

For the reasons stated by the judge, we also affirm the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) by unreasonably delaying in furnishing the Union with the maximum patient census on each unit for each shift during the period from September 1, 2012 through April 12, 2013. Because the Union disputed the Respondent's claim that it fully responded to this information request, and the judge was unable to resolve the dispute, she properly ordered the Respondent to furnish the information to the extent it has not already done so. See *Columbia College Chicago*, 360 NLRB No. 122, slip op. at 2 fn. 6 (2014).

There are no exceptions to the judge's finding that the Respondent did not violate Sec. 8(a)(5) and (1) by failing and refusing to provide the Union with the FTE full complement standard for ancillary staff and with information pertaining to contractor Access.

Additionally, we agree with the judge that the complaint should not be deferred to arbitration and that the Respondent failed to prove that the Union waived its right to request information. However, we find it unnecessary to rely on *New York Post*, 353 NLRB 625 (2008), which was decided by a two-member Board. See *New Process Steel v. NLRB*, 560 U.S. 674 (2010).

Although Member Johnson agrees that deferral is inappropriate in this case, he would defer in a case in which the parties' bargaining agreement was comprehensive of procedures for handling of information requests related to grievances. Here, the parties' contract does not contain such a provision.

[3] We have amended the judge's conclusions of law and remedy consistent with the judge's findings.

We shall modify the judge's recommended Order to conform to her unfair labor practice findings and to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act."

AMENDED REMEDY

In addition to the remedies provided in the judge's decision, we shall order the Respondent to timely furnish the following information to the Union: statistics detailing the number of overtime hours and shifts nurses' aides worked from September 2012 through February 22, 2013, for the units named in the grievance.

ORDER

The National Labor Relations Board orders that the Respondent, Lenox Hill Hospital, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with The New York Professional Nurses Union (the Union) by failing and refusing to furnish requested information to the Union and by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent it has not already does so, furnish to the Union in a timely manner the following information requested by the Union on February 22, 27, and April 12, 2013: statistics regarding the number of hours (and/or shifts) for nurses' aides working one-on-one assignments for the 6-month period preceding February 22, 2013; patient census reports from September 1, 2012, through February 22, 2013, for the units named in the Union's February 19, 2013 grievance alleging violations of article XXVI of the parties' collective-bargaining agreement (the grievance); the FTE full complement standard (filled and unfilled positions) for registered nurses and nurses' aides for each unit named in the grievance; statistics detailing the number of overtime hours and shifts nurses' aides worked from September 2012 through February 22, 2013, for the units named in the grievance; the number of times nurses' aides were pulled off units (including their own) to cover one-on-one assignments from September 1, 2012, through February 22, 2013; and the maximum patient census on each unit for each shift during the period from September 1, 2012, through April 12, 2013.

(b) Bargain with the Union over the provision of information regarding the mean and mode hours between the time patients were given their discharge orders and when they actually left hospital premises and provide such information after an agreement has been reached.

(c) Within 14 days after service by the Region, post at its New York, New York facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 22, 2013.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 12, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with The New York Professional Nurses Union (the Union) by failing and refusing to furnish it with requested information and by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, to the extent we have not already done so, furnish to the Union in a timely manner the following information requested by the Union on February 22, 27, and April 12, 2013: statistics regarding the number of hours (and/or shifts) for nurses' aides working one-on-one assignments for the 6-month period preceding February 22, 2013; patient census reports from September 1, 2012, through February 22, 2013, for the units named in the Union's February 19, 2013 grievance alleging violations of article XXVI of the parties' collective-bargaining agreement (the grievance); the FTE full complement standard (filled and unfilled positions) for registered nurses and nurses' aides for each unit named in the grievance; statistics detailing the number of overtime hours and shifts nurses' aides worked from September 2012 through February 22, 2013, for the units named in the grievance; the number of times nurses' aides were pulled off units (including their own), through February 22, 2013; and the maximum patient census on each unit for each shift during the period from September 1, 2012, through April 12, 2013.

WE WILL bargain with the Union over the provision of information regarding the mean and mode hours between the time patients were given their discharge orders and when they actually left hospital premises and provide such information after an agreement has been reached.

LENOX HILL HOSPITAL

The Board's decision can be found at www.nlrb.gov/case/02-CA-103901 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th St., N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

Gregory Davis, Esq., for the General Counsel.
Peter D. Stergios and *M. Christopher Moon, Esqs. (McCarter and English, LLP),* of New York, New York, for the Respondent.
Richard M. Betheil, Esq. (Pryor Cashman, LLP), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MINDY E. LANDOW, Administrative Law Judge. A charge in Case 02–CA–103901 was filed by The New York Professional Nurses Union (the Union) against Lenox Hill Hospital (Respondent) on April 29, 2013.[1] On February 20, 2014, the Regional Director issued a complaint and notice of hearing (complaint) against alleging that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

The complaint alleges that Respondent failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of unit employees, consisting primarily of registered nurses (RNs) by failing and refusing to provide certain relevant information necessary to the Union's statutory responsibility to represent such employees. The particulars of the information requests and the Respondent's responses thereto will be described in further detail below.

Respondent filed an answer to the complaint denying the material allegations therein and raising certain affirmative defenses, as will be addressed herein.

The case was heard before me on May 6, 2014. The parties thereafter filed posthearing briefs. Based on my observations of the witnesses, a review of the documentary evidence, my resolutions of apparent conflicts in the record based upon the foregoing and the inherent probabilities of the evidence proffered, the record as a whole and the arguments set forth in the briefs

[1] All dates are in 2013 unless otherwise specified.

filed by the parties I make the following

FINDINGS OF FACT

JURISDICTION

Respondent is a New York corporation which operates a hospital providing patient care, treatment, and related services at its facility in New York, New York. Annually, the Respondent derives gross revenues in excess of $250,000 and purchases and receives at its New York facility products, goods, and materials valued in excess of $5000 directly from points outside the State of New York. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

UNFAIR LABOR PRACTICES

Background

Since 1985, the Union has represented a unit consisting primarily of all full-time and regular part-time registered nurses (RNs) employed by the Respondent. The current collective-bargaining agreement (the Agreement or CBA) between the parties covers the period from November 1, 2012, through October 31, 2015.

Eileen Toback is the executive director of the Union, Maureen McCarthy is the president, and Kathy Flynn is the vice president. At relevant times, Nisha Bannerjee was an associate director of the Union. She left the employ of the Union in December 2013.

Emily Weisenbach and Kiera Stajk are each employed as directors of talent and organizational performance within Respondent's human resources department. They are responsible for, among other things, performing human resource functions, including labor relations, for nursing and perioperative personnel. Phyllis Yezzo is the vice president of nursing.

Certain of the information sought by the Union concerns nonunit personnel, in particular regarding the assignment of nurses' aides. These employees are responsible for, among other things, answering telephones, responding to patient call lights, assisting patients to and from bathrooms, taking vital signs, changing bed linens, repositioning patients, and serving food trays. At times, as Weisenbach and others testified, if nurses' aides are not available such functions may be assumed by registered nurses. The Employer also utilizes aides provided by outside contractors for one-on-one patient assignments. Until sometime in 2010, such services were provided by a contractor referred to in the record as Access. More recently such aides are provided by a contractor called Regent Care.

The Relevant Provisions of the Collective-Bargaining Agreement

At issue here are a series of information requests made by the Union relating to a grievance filed alleging violations of article XXVI of the most recent Agreement.

Article XXVI of the Agreement provides, in pertinent part:

> 1. The Hospital shall continue to implement the currently agreed upon nurse-to-patient ratios and effective July 1, 2013, the Hospital implement agreed upon nurse-to-patient ratios (staffing standards) as modified in this agreement. The Hospital shall provide qualified RNs on duty to give patients the nursing care that requires the judgment and specialized skills of a Registered Nurse. The Hospital shall also provide qualified support personnel on duty in order to meet the nursing care needs of patients and shall also supply the necessary tools, equipment and supplies necessary for RNs to provide proper nursing care for their patients**.**
>
> 2. The Hospital will provide to the Union, and the Hospital and the Union will review on a quarterly basis, actual staffing compared to required staffing (to meet nurse-to-patient ratios) based on the average daily census.
>
> 3. The nurse-to-patient ratios are not and cannot be, sensitive to every change in patient acuity and activity, and there will be times intermittently or occasionally where there are variations in the ability to meet guidelines such as uncontrollable or unpredictable occurrences. These intermittent or occasional times will not be construed as evidence of the Hospital's failure to meet the staffing standards. Additionally, compliance with staffing standards will be considered achieved if, in the measured quarter, the average number of RN FTEs actually worked per pay period is equal to or greater than the sum of RNs required to meet nurse-to-patient ratios based upon average daily census. The Hospital continues to be committed to discussing in detail with the union unit level variances, and discussing possible causes of and solutions to individual unit variances, including reallocation of staff, and any issues remaining following such discussions shall be subject to the grievance procedure. On units where the ratios at full census require one (1) additional nurse being assigned to care for two (2) or fewer patients over the ratios, the additional nurse may or may not be added based on patient acuity, except where the nurse's assignment is two (2) critically ill patients.

Section 6 of article XXVI further provides:

> If, at the quarterly review, the Union alleges that the staffing standards routinely are not being adhered to, the dispute may be brought before a qualified individual to mediate resolution of the issue. The mediator shall be a neutral individual with expertise in the subject matter. Settlement agreements reached in the mediation process will be reduced to writing and signed by both parties, and will be implemented within thirty (30) days following the signing of the settlement agreement. If the dispute is not settled in mediation, either party can take it to arbitration pursuant to Article XXXIV (Arbitration) of this Agreement. The arbitrator's authority in such arbitration shall be limited to a review as to whether the Hospital has failed, without justification, to adhere to the staffing standards established hereunder. The sole remedy the arbitrator is empowered to award is a direction to the Hospital to enter into substantial compliance with the staffing standards established hereunder.

Another section of the Agreement, article XXVII, is entitled, "Recruitment and Retention." It is a lengthy provision which provides for various work assignment rules, among other things. Section 8 of this provision of the Agreement provides, in relevant part, as follows:

> The Employer and the Union recognize that the performance of non-nursing functions by registered nurses impedes their ability to deliver quality, cost-effective patient care and is not intended to be part of their regular scope of responsibilities. The Employer will continue to investigate and implement systems that support the delivery of patient care by registered nurses that will minimize non-nursing functions, for example, the clinical information system, the automated supply and medication distribution system, the pneumatic tube system for pharmacy and laboratory, the standardization of nursing stations and chars and the upgrading and training and support personnel. The registered nurses have been and will continue to be involved in the evaluation and selection process of such systems.

The Union's Grievance

Union President McCarthy testified that she received numerous complaints from registered nurses and union delegates that the contractual ratios were not being adhered to. For example, on units which required a 1:6 ratio, nurses were caring for eight or nine patients and on those requiring a 1:4 ratio, nurses were being asked to take five or six patients. There were also frequent complaints that there was a lack of nurses' aides on the units, so that the registered nurses were required to assume those responsibilities as well. As a result the Union decided to file a grievance over these matters.

Thus, on February 12, the Union filed a step 3 class action grievance alleging that Respondent violated article XXVI of the Agreement, which was subsequently amended on February 19 as follows:

> In accordance with Article XXIII, and including but not limited to Article XXVI [Section] 1 and [Section] 7(a) of the collective bargaining agreement, NYPNU is filing a step 3 class action grievance on behalf of NYPNU RN's on 5 Uris, 9Uris, 7East, 8 Lachman, 5 Wollman, 7 Uris, 4 Lachman, 4 Uris and 7 Lachman.
>
> LHH is in violation of, but not limited to, the nurse/patient ratios on each of the aforementioned units. On a regular basis, RNs are over ratio. Additionally, LHH has not provided qualified support personnel on duty as well as the necessary tools, equipment and supplies necessary to meet the nursing care needs for the patients on these units.
>
> Remedy requested:
>
> The employer will make grievants whole in every way including, but not limited to, complying with the contractual nurse/patient ratios and provision of the necessary qualified support personnel, tools, equipment and supplies necessary. In addition to providing NYPNU with quarterly ratio compliance data.
>
> The grievance was sent by email from Nisha Bannerjee to Emily Weisenbach

The Union's February 22 and 27 Information Requests

In connection with the grievance, on February 22, the following information request was sent by Bannerjee to Weisenbach:

> NYPNU requests the following information relevant to the above-named grievance:
>
> 1. Statistics regarding the number of hours (and/or shifts) aides working one-on-one assignments in the past six (6) months;
> 2. Number of hours (and/or shifts) that Access provided aides and/or observation assistants for one-to-one assignments for the last twelve months they served a contract with Lenox Hill Hospital;
> 3. Current LHH protocol for a patient (or patent's family) to hire a private duty nurse.[2]

On February 27, 2013, the Union submitted another information request, again from Bannerjee to Weisenbach, asking for:

> 1. The patient census reports from September 1, through February 22, 2013 for the units named in this grievance;
> 2. The FTE full complement standard (filled and unfilled positions) for each unit named in the grievance, including ancillary staff;
> 3. Statistics detailing with the number of overtime hours and shifts nursing aides worked between September 2012 and February 22, 2013, in the units named in this grievance;
> 4. LHH's mean and mode hours between the time patients were given their discharge orders and when they actually left the hospital premises;
> 5. The number of times nurse aides were pulled off units (including their own) to cover one-on-one assignments.

By email the following day, Bannerjee asked Emily Weisenbach when the Union would receive the information it had requested. Weisenbach replied, "I am working on this, I am unsure at this point if we will release the data."

The March 5 and 14 Mmeetings

An initial meeting concerning the grievance was held on March 5. Present for the Employer were Directors Weisenbach and Stajk, and Vice President Phyllis Yezzo. Present for the Union were Toback, McCarthy, Vice President Flynn and Bannerjee.

At the meeting, Respondent provided the Union with two reports in response to its information requests. The first report showed the average number of RN''s required and assigned on day and night shifts by unit for the period from January 1 to February 19. The second report contained the patient/RN daily staffing data by unit; again, for the period from January 1 through February 19, 2013. As Respondent acknowledges, Weisenbach did not realize at the time that the information provided was not fully responsive to the timeframe sought by the Union's request. As she testified, Weisenbach only realized that the response had not been fully responded to in December 2014, as a result of communications with Hospital in-house counsel.

After reviewing the data that was provided to them, the union representatives at the meeting lodged "snap shot" of the census and staffing at 8 a.m. and 8 p.m.—at the beginning and end of each shift—and therefore did not reflect the changes in

[2] This last item is not a subject of the instant complaint.

staffing and patients throughout the day. The union representatives further questioned why fractions appeared on the reports. The Union was told that this reflected people coming on and off the unit. According to Toback, the Union complained that the information did not establish whether the ratios were being met and the Hospital maintained that they were. The Union asked for additional information to illustrate what was occurring throughout the day and asked for information for periods from 2 to 4 hours throughout the shift. According to Toback, Weisenbach said she would provide such information, and Weisenbach did not deny that she provided such assurances.

With regard to those aspects of the Union's request which concerned itself with the nurses' aides and other nonunit personnel, Toback offered the following testimony:

> Q: (by Counsel for the General Counsel) Okay. With respect to the second information request in the letter dated February 27th, do you recall discussion of that information request?
>
> A: Discussion with the Hospital
>
> Q: Yes
>
> A: Only that we weren't going to receive the – we were told we weren't going to receive the information
>
> Q: Who said that?
>
> A: Emily Weisenbach
>
> Q: Did Ms. Weisenbach explain why you wouldn't receive that information?
>
> A: Not in too many details, only that they didn't believe it was our information to ask for.
>
> Q: Do you recall any discussion by any of the union representatives as to why they needed that information?
>
> A: We asked for the information because we said this impacted the ratios and it impacted the work of the nurses on, on the units.

Toback further testified that the Union sought the information regarding overtime assignments for nurses' aides because, "we were trying to get at finding out what aides were on the units and that would include overtime, looking at overtime hours to calculate where they were, if they were there."

With regard to the information sought regarding the time differential between discharge and when a patient actually leaves the Hospital, Toback testified, "[w]e had indicated that there were patients who were discharged, but could not be leaving the hospital for hours and they still required a level of care. Some of these people are discharged and are still really quite critical and need attention. And they might be there for hours, but weren't factored into the ratios and weren't factored into the information that the hospital had given us, and impacted the ratios."

On cross-examination, Toback acknowledged that in addition to claiming this information was not relevant, the Hospital asserted something "along the lines" that such information was impossible to calculate or useless to know because of the changes that inevitably occur on a unit that are unpredictable.

Weisenbach testified that she initially informed Bannerjee that the Union would not be receiving information about the nurses' aides in an email. In a subsequent telephone conversation she asked why the Union wanted this information, and "[Bannerjee] couldn't articulate that information for me." The Hospital maintained the position that such information was not relevant; nor did the Union have the right to review another union's data.

Weisenbach further testified that, at the March 5 meeting, Yezzo and McCarthy spoke at length about tools, equipment and ancillary staff, especially regarding the uptake in constant observations,[3] and how that pulled aides away from performing other functions. With regard to the information sought regarding Access, a vendor service used for constant observations, Weisenbach testified that their contract terminated in 2010 and she did not have the data to provide to the Union as such information was not contained in electronic medical records maintained by the Hospital. Weisenbach testified that she this conveyed this information to Bannerjee in a telephone conversation sometime in late-February when the information was initially requested. She also acknowledged that she did not inform the Union that another agency presently had a similar contract but it does not appear that the Union inquired further regarding this matter.

With regard to the Union's request about the differential between the time a discharge order is written and the actual discharge, Weisenbach stated that she thought the Union understood that such information was not maintained in electronic medical records. While a program she referred to as "Sunrise" would indicate when the discharge order was written, it would not necessarily relate to the time a patient leaves the building.[4] Weisenbach testified that she explained that to the Union during the March 5 meeting and was under the impression that the Union was satisfied with the Hospital's explanation at the time. On cross-examination, Weisenbach acknowledged that information regarding when a patient actually leaves the hospital was contained in patient charts, which obviously also contain confidential patient information. The record does not establish to what extent human resources personnel are authorized to review such confidential material. Weisenbach also testified that compiling this information would be burdensome, as it would require reviewing "hundreds and hundreds" of charts. Acknowledging that confidentiality concerns could be addressed through redaction, Weisenbach maintained that when there was discussion over this issue the Union was satisfied with the Hospital's explanation of why the data could not be provided. Her testimony in this regard was not specifically rebutted by either union witness who attended the meeting and testified herein; however, there is no evidence that the Union has withdrawn its request for such information.

There was a subsequent meeting on March 14, which Weisenbach referred to as an informal regularly scheduled followup session, attended by only Weisenbach and Stajk on behalf of the Employer. The subject of the Union's information requests came up again, and Weisenbach suggested that the

[3] Constant observations are also referred to here as one-on-one observations. When ordered by a psychiatrist, a nurse's aide must be within arm's length of the patient at all times, and cannot attend to others.

[4] Weisenbach additionally testified that that Sunrise would reflect "one-on-one" assignment of nurses' aides.

Union file a grievance regarding the Hospital's unwillingness to provide the data sought. McCarthy testified that the there was discussion of "issues" regarding the data, specifically that the Union could not understand the employee percentages reflected therein. She stated that the Hospital was informed that the 8 a.m. and 8 p.m. snapshots did not accurately reflect either the number of patients on the unit during the shift, nor the number of nurses on the shift because they did not show changes in the staffing which occurred throughout the day or changes in the patient census during any particular shift. Weisenbach acknowledged that the Hospital agreed to provide this information. On cross-examination, McCarthy reiterated that at this meeting the Union raised its concerns about not receiving information regarding shift times and nurses' aides. The Hospital informed the Union that it was not prepared to provide the information regarding nurses' aides.

The "Snapshot" Information

After the discussion on March 14, Weisenbach emailed a colleague, Linda DeCarlo, and inquired if there was a way to obtain the snapshot information sought by the Union. DeCarlo provided Weisenbach with the data she requested, using 10 a.m. and midnight as markers for measuring staffing levels on each shift. The data was compiled in the form of an Excel file with multiple tabs, the initial tab consisting of a summary sheet. Additional tabs reflected data for each unit at issue.

On April 9, Weisenbach commenced a 4-month maternity leave. She emailed the Excel file to Stajk, stating that this would be relevant to a followup meeting scheduled for April 10. Rather than forwarding the entire file, Stajk printed the initial summary page and sent it to Bannerjee. The Union did not lodge a complaint that the information provided was incomplete and Weisenbach did not learn that the Union had not received the entire file until shortly prior to the hearing in this matter. At that time, she sent it to the Union. This was more than 1 year after the information was initially requested.

The April Information Request

On April 12, the Union, by Bannerjee, requested that Respondent furnish the Union by April 19 with the following information:

> The maximum patient census on each unit for each shift during September 1, 2012, through April 12, 2013 (present date).

Stajk replied, "[s]ure, I can send that over to your shortly. If it is not what you are looking for, please give me a call to discuss."

However, the information forwarded to the Union was not specifically what it had sought and Bannerjee wrote, "Kiera, we appreciate you getting back to us so quickly but just to clarify"—"maximum" doesn't mean "average" (which is what we're seeking as per our info request). Stajk replied she would review the data and get back to the Union.

Respondent asserts in its post hearing brief that the summary report and Excel file later forwarded to the Union is responsive to this information request. Counsel for the General Counsel maintains that there was no response to the Union's request for maximum patient census data. The manner in which these exhibits were introduced into the record are, in themselves and without more, insufficient for me to draw any definitive conclusions in this regard. In any event, whether or not the information eventually provided was or was not responsive to the April 12 information request, the record is undisputed that Respondent has acknowledged that it sought relevant information and, further, that it was not provided to the Union until sometime shortly prior to the hearing in this matter, which is over one year after it was initially requested.

Analysis and Conclusions

General Legal Principles

An employer has the statutory obligation to provide on request, relevant information that a union needs for the proper performance of its duties as collective-bargaining representative *NLRB V. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967*); Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979). These responsibilities include: (1) monitoring compliance and effectively policing the collective-bargaining agreement; (2) enforcing provisions of a collective-bargaining agreement; and (3) processing grievances. See *Amersig Graphics, Inc.,* 334 NLRB 880, 885 (2001) (union requests for updated information and information about temporary employees upheld). Information that aids the grievance-arbitration process is considered relevant, including information needed to decide whether file or to proceed with a grievance to arbitration. *Beth Abraham Health Services,* 332 NLRB 1234 (2000). The Board has also held that an employer's unreasonable delay in furnishing information "is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Woodland Clinic*, 331 NLRB 735, 736 (2000), citing *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). Delays which are unaccompanied by legitimate excuse are generally unlawful. See, e.g., *Pan American Grain*, 343 NLRB 318 (2004), enfd. in relevant part 432 F. 3d 69 (1st Cir. 2005) (3-month delay); *Bundy Corp.*, 292 NLRB 671, 672 (1989) (2-month delay); *Woodland Clinic*, supra at 737 (7-week delay).

Where a union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant and a respondent must provide the information. In such instances, the employer has the burden of rebutting that presumption and establishing lack of relevance. *Certco Distribution Centers*, 346 NLRB 1214, 1215 (2006); *AK Steel Corp*., 324 NLRB 173, 183 (1997). With respect to such information, the union is not required to show the precise relevance of the requested information to particular bargaining unit issues. *AK Steel*, supra; *A-Plus Roofing*, 295 NLRB 967, 970 (1989).

Where the requested information pertains to employees or matters outside the bargaining unit, a union has the burden of demonstrating the relevance of such information. *Dodger Theatrical Holdings*, 347 NLRB 953, 967 (2006).

The standard for relevancy in either situation is the same: "a liberal discovery type standard." *Acme Industrial*, supra at 437. The information sought need not be dispositive of the issues between the parties but must have some bearing on it. *Pennsylvania Power & Light Co*., 301 NLRB 1104, 1105 (1991), or it must be shown that it would be of use to the union in carrying out its statutory duties and responsibilities. *Wisconsin Bell Co*., 346 NLRB 62, 64 (2005).

Thus, where a union is obligated to establish relevance, it need only demonstrate a reasonable belief, based upon objective facts, that the requested information is relevant. *Disneyland Park*, 350 NLRB 1256, 1258 (2007); *Dodger Theatrical*, supra, 347 NLRB at 967. Further, the Board does not pass on the merits of a union's grievance, or assertion that the employer may have violated its contract in assessing whether information relating to the processing of a grievance is relevant. *Certco Distribution C*enter, supra at 1215; *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994).

Even absent a showing of probable relevance, an employer is obligated to furnish the requested information "where the circumstances put the employer on notice of a relevant purpose which the union has not spelled out." *National Extrusion & Mfg. Co*., 357 NLRB No. 8, slip op. at 48 (2011) (quoting *Allison Co*., 330 NLRB 1363, 1367 fn. 23 (2000), enfd. sub nom. *KLB Industries v. NLRB,* 700 F.3d 551 (D.C. Cir. 2012).

An employer who raises valid confidentiality concerns is required to seek an accommodation of its interests through bargaining with the union. *National Steel Corp.,* 335 NLRB 747 (2001); *GTE California, Inc.,* 324 LRB 424 (1997). Any claim that documents cannot be produced or are too burdensome to be produced must be asserted and proven. Respondent must provide the information in its possession, make a reasonable effort to secure any unavailable information, and, if any information remains unavailable, explain and document the reasons for its continued unavailability. See *Garcia Trucking Service,* 342 NLRB 764 (2004). If necessary, an employer is required to contact a third party believed to possess the information. *Earthgrains Co*., 349 NLRB 389, 399 (2007).

Before assessing the above principles in light of the information sought by the Union, it is necessary to consider two preliminary contentions raised by Respondent: that this matter should be deferred to the parties' grievance-arbitration process and that the Union, through its conduct in bargaining and the express terms of the Agreement, waived its right to seek much of the information which is the subject of the instant complaint.

Deferral

With regard to the issue of deferral, Respondent argues that if the complaint is not dismissed, it should be deferred. In this regard, the Board has long held that deferral is inappropriate in Section 8(a)(5) information request cases. See, e.g., *United Technologies Corp*., 274 NLRB 504, 505 (1985); *Daimler Chrysler Corp*., 331 NLRB 1324, 1324 fn. 2 (2000), enfd. 288 F.3d 434 (D.C. Cir 2002); *Chapin Hill at Red Bank*, 360 NLRB No. 27, slip op. at 1 fn. 2 (2014).

Waiver

Regarding the Respondent's claim of waiver, it is well-established that employer which asserts a union has waived a statutory right has the burden of establishing that the alleged waiver was "clear and unmistakable." *Metropolitan Edison v. NLRB,* 460 U.S. 693, 103 S.Ct. 1467, 1476 (1983); *Endo Painting Service,* 360 NLRB No. 61 (2014). Under Board law, a waiver can occur in one of three ways: (1) by express provision in a collective-bargaining agreement, (2) by the conduct of the parties (including past practices, bargaining history), or (3) by a combination of the two. *United Technologies Corp*., supra (citing *Chesapeake & Potomac Telephone Co*. *v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982). In order to satisfy the "clear and unmistakable" standard, the contract language must be specific, or it must be shown that "the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter." *Allison Corp.,* 330 NLRB 1363, 1365 (2000).

Here, Respondent argues that both the contract language and the parties' bargaining history evince such a "clear and unmistakable" waiver. In particular, Respondent cites to the contractual procedure for monitoring compliance with article XXVI which provides that the parties review on a quarterly basis, "actual staffing compared to required staffing . . . based on the average daily census." Respondent argues that the type of information that may be requested in connection with an article XXVI dispute has been deliberately limited strictly by the parties to the staffing data set forth therein, which concerns itself with nurse to patient ratios.

In support of these contentions, Respondent relies upon *New York Post*, 353 NLRB 625 (2008). Apart from the fact that *New York Post* was decided by a two-member Board and is not given controlling weight,[5] I find it readily distinguishable on the facts presented therein. In contrast to the situation presented in that matter, where the express language of the memoranda of understanding (MOUs) entered into by the parties demonstrated the parties' intent that a committee of representatives, including a union monitor, would be the exclusive forum for investigating complaints regarding the MOUs and enforcing their terms, the Agreement here contains no such limiting language. To the contrary, the Agreement contains language asserting otherwise, in particular an undertaking that Respondent discuss "in detail with the union unit level variances, and discussing possible causes of and solutions to individual unit variances, including reallocation of staff." In addition, there is a contractual recognition that the parties, "recognize that the performance of non-nursing functions by registered nurses impedes their ability to deliver quality, cost-effective patient care and is not intended to be part of their regular scope of responsibilities." Such language cannot be said to constitute clear and unequivocal evidence of the Union's waiver of its statutory right to seek information so as to enter into informed discussions with Respondent regarding such matters and to otherwise seek to enforce the Agreement.

Respondent further relies upon the Board's decision in *American Broadcasting Co*., 290 NLRB 86 (1988). There, the Board found that the collective-bargaining agreement at issue set forth the minimum information that the respondent was required to supply, and that the union had assigned to a committee whatever right it had to other information under the contractual provision at issue. As it happened, the contractually-mandated procedure for resolving such disputes was not successfully implemented.

Here, the Agreement may arguably set forth the minimum information which the Respondent is required to provide to enable the Union to enforce article XXVI; however, there is no evidence that the Union in negotiations or through agreement

[5] See *New Process Steel v. NLRB*, 130 S.Ct. 2635 (2010).

agreed to waive any statutory right to further relevant information to enable it to monitor compliance with the Agreement. Rather, the language of the Agreement contemplates to the contrary, setting forth Respondent's agreement to: "continue[] to be committed to discussing in detail with the union unit level variances and discussing possible causes of and solutions to individual unit variances, including reallocation of staff . . ." Such language cannot be said to support a reasonable contention of "clear and unmistakable" waiver of the Union's right to seek information not specifically set forth in article XXVI, and rather supports a conclusion that the Hospital was obliged to provide such information to the Union to enable it to engage in meaningful discussions regarding unit variances, reallocation of staff and similar matters. In short, I find that Respondent's position in this regard requires inferences which are wholly unsupported by the record. Accordingly, I reject Respondent's contention that the Union has waived its right to seek information other than "actual staffing compared to required staffing . . . based on the average daily census" with regard to its investigation of grievances under article XXVI of the Agreement.

The Relevancy of the Information Sought

Generally, the evidence adduced here shows that Respondent has failed and refused to provide any information pertaining to nurses' aides or other nonunit staff. The record also establishes that Respondent delayed in providing certain information acknowledged to be relevant, and which it had committed to provide to the Union: in particular, information relating to nurse-patient ratios at times other than that at the beginning of each shift. The record further shows that Respondent delayed, without any reasonable explanation, but possibly through error, the provision of information regarding maximum patient census for at least 1 year.

I find that, as a general matter, the Union has demonstrated the relevance of the information sought regarding nonunit personnel. The testimony of both Union and Employer witnesses regarding the two meetings held in March 2013, as outlined above, show this to be the case. In this regard, I do not credit Weisenbach's vague and nonspecific testimony to the effect that Bannerjee "couldn't articulate that information for [her]." In any event, given the nature of the Union's grievance, and the contractual provisions at issue, I find that the relevancy of the information sought would have been apparent to the Respondent, in any event.

By its express terms, article XXVI, section 1, requires the Employer to provide nursing units with "qualified support personnel on duty in order to meet the nursing care needs of patients and . . . the necessary tools, equipment and supplies necessary for RNs to provide proper nursing care for their patients." Section 3 of that article further provides that . . . any issues remaining following such discussions [regarding unit level variances and possible causes and solutions to individual unit variances, including reallocation of staff] shall be subject to the grievance procedure." Thus, it is apparent that article XXVI is designed to insure that unit registered nurses are able to adequately perform their jobs by requiring the Employer to staff an adequate number of nurses per patient and to provide them with the necessary support personnel and tools to engage in meaningful patient care.[6]

The record demonstrates, and it is not disputed, that nurses' aides may be moved from their assigned units to other assignments within the Hospital. As the union witnesses testified, nurses complained that the provision of nursing services were hindered because of several factors, such as one-on-one assignments of nurses' aides, the fluctuating numbers of patients and aides throughout the working day, and patients remaining on the wards after the issuance of discharge orders Thus, any information designed to determine whether nurse's aides were in fact on duty on the unit they were assigned to or were otherwise engaged is directly relevant to the investigation and consideration of the grievance filed by the Union alleging that Respondent violated article XXVI.

Respondent has argued that article XXVI effectively limits the Union's queries concerning nurses' aides to whether or not they were "qualified" rather than "sufficient." This contention is more properly a matter to be brought before the arbitrator, who is authorized to decide whether there has been, in fact, a violation of the Agreement. Such a distinction, however, does not obviate the Respondent's obligation to provide the Union with relevant information regarding whether mode and manner of assignment of nonunit personnel impacts upon the ability of unit employees to perform their job responsibilities.

Thus, turning to the specific requests by the Union, the relevance of the information sought and the Respondent's failure to respond or to do so in a timely fashion, has been largely demonstrated, with some limited exceptions, as set forth below.

On February 22, the Union requested: (1) statistics regarding the number of hours (and/or shifts) aides working one-on-one assignments in the past 6 months and (2) number of hours (and/or shifts) that Access provided aides and/or observation assistants for one-to-one assignments for the last 12 months they served a contract with Lenox Hill Hospital.

I find that the Union has demonstrated the relevance of the information sought with regard to the number of hours and/or shifts worked by nurses' aides for the 6 months preceding the information request. The testimony of the witnesses clearly establishes that when nurses' aides are not on duty or are otherwise assigned, their responsibilities are assumed by registered nurses and this clearly can have the practical effect of eroding the level of patient care that the contractually-prescribed ratios are designed to ensure. Accordingly, I conclude that by failing and refusing to provide such information to the Union, Respondent has violated the Act.

With regard to the information sought regarding those employees provided by the contractor Access, I cannot conclude that Respondent has violated the Act. It is the case that the testimony of Toback and McCarthy, as corroborated by Weisenbach, establishes that nurses' aides who are given one-

[6] The General Counsel, relying on McCarthy's testimony, has maintained that the RN/patient ratio reports that were provided by Respondent show that it was not in compliance with the staffing requirements set forth in art. XXVI on several units during the relevant period of time. However this is beside the point: it is not for me or for the Board to pass on the merits of the grievance here; the only issue is whether the Union is entitled to the information to allow it to meaningfully investigate and then process the grievance, if warranted.

on-one patient assignments are otherwise unavailable to perform other duties. General Counsel has argued that the assignment of outside aides to one-on-one assignments allows the hospital aides to perform their regular patient care duties, which lessens the need for registered nurses to step in and perform the tasks normally performed by nurses' aides. I have concluded from Weisenbach's testimony, however, which I find to be credible and not specifically rebutted by any other witness, that she informed Bannerjee that Access had not been supplying employees to the Hospital since 2010. In addition, I conclude that information regarding such contracting would not be relevant to an assessment or prosecution of a grievance filed in 2013. Accordingly, I conclude that Respondent did not violate the Act in this regard, as has been alleged in the complaint.

On February 27, the Union requested: (1) the patient census reports from September 1 through February 22, 3013; (2) the FTE complement standard (filled and unfilled positions) for each unit named in the grievance, including ancillary staff; (3) statistics detailing the number of overtime hours and shifts nurses' aides worked between September 2012 and February 22, 2013, for the units named in the grievance; (4) the mean and mode hours between the time patients were given their discharge orders and when they actually left the hospital and (5) the number of times nurses' aides were pulled off units (including their own) to cover one-on-one assignments.[7]

The relevance of the patient census reports, which show the number of patients and registered nurses by unit per quarter, is undisputed. The record demonstrates that Respondent, without explanation, failed to produce such reports for the period from September through December 31, 2012. In agreement with the General Counsel, I further find that the FTE information for the unit registered nurses is presumptively relevant. Respondent has failed to rebut this presumption or to otherwise show why such information cannot or should not be produced.

With regard to the FTE request for nurses' aides, I find that the Union has demonstrated that it is pertinent to its investigation of the assignment of these employees, and is directly related to the article XXVI grievance. Thus, to the extent such information sought concerns itself with the nurses' aides I find it to be of relevance. I additionally conclude, however, that the Union has failed to demonstrate the relevance of such information with regard to other vaguely-described "ancillary" staff, as the nature of their job duties is undeveloped in this record. The request for information regarding the overtime hours worked by nurses' aides is related to and an extension of the Union's request for information regarding hours worked by nurses' aides, the relevance of which has been shown, as set forth above.

With regard to the reported discharge and actual discharge times of patients, I find that such information is arguably relevant as it directly relates to the calculation of nurse to patient ratios as set forth in the Agreement. The record is without rebuttal that such patients may require ongoing care prior to leave the Hospital, further eroding the nurse-to-patient ratio on any particular unit. While this information may be difficult to gather and compile, the record shows that it is maintained in patient files. Under all the circumstances, I find that Respondent was under an obligation to address its concerns about the burdensome nature of the request and any other potential impediment, such as patient confidentiality, with the Union. Thus, I find that it is appropriate to order Respondent to bargain with the Union over the manner for the provision of such information, as well as the appropriate timeframe involved, and make such information available to the Union once an agreement has been reached.

I additionally conclude that the information regarding the number of times nurses' aides were reassigned is relevant as it is apparent that such reassignments makes these employees unavailable to perform their regularly scheduled duties, which then may require the registered nurses to assume such tasks. Again, this arguably affects the ratios set forth in the Agreement. To the extent the Hospital maintains such records, they should be made available to the Union for the period of time as described above.

The information requested on April 12 regarding the maximum patient census on each unit named in the grievance for the period through September 1, 2012, through April 12, 2013, is obviously of some relevance in policing the Agreement insofar as it impacts the ratios and is relevant to the Union's apparent contention that patient numbers may fluctuate. To the extent that Respondent delayed in providing such information, regardless of whether such failure was inadvertent or the result of error, such delay has been in violation of its obligations under the Act.

In short, for the reasons set forth above, I find that, under the circumstances of this case, Respondent has a general statutory obligation to respond to the Union's requests for information regarding work assignments and transfers of nurses' aides on the units named in its article XXVI grievance. I further find that Respondent, inadvertently or otherwise, failed and refused to provide admittedly relevant information concerning bargaining unit personnel to the Union as requested.

CONCLUSIONS OF LAW

1. The Respondent, Lenox Hill Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, New York Professional Nurses Association, is a labor organization within the meaning of Section 2(5) of the Act and represents a bargaining unit comprised primarily of registered nurses employed by the Respondent.

3. By refusing to bargain collectively with Union by failing and refusing to furnish it with requested information as set forth in letters dated February 22, 27, and April 12, 2013, that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees, Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

[7] The Union failed to specify a timeframe for this last request. I have concluded, however, that given the context and the time periods otherwise set forth in the information request that the same timeframe should apply: i.e., September 2012 to February 2013. In this regard, I note that the Hospital did not object to the open ended nature of the Union's request but more generally opposed providing the information as it pertained to nonunit personnel.

4. The Respondent's above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist from engaging in such conduct and take certain affirmative action designed to effectuate the policies of the Act.

In particular, I shall recommend that, to the extent it has not already done so, Respondent shall timely furnish the following information to the Union: statistics regarding the number of hours (and/or shifts) for nurses' aides working one-on-one shifts for the 6-month period preceding February 22, 2013; patient census reports from September 1, 2012, through February 22, 2013, for the units named in the Union's February 19 grievance alleging violations of article XXVI of the parties collective-bargaining agreement (the Grievance); the FTE full complement standard (filled and unfilled positions) for registered nurses and nurses' aides for each unit named in the Grievance; the number of times nurses' aides were pulled off units (including their own) to cover one-on-one assignments from September 1, 2012, through February 22, 2013, and the maximum patient census on each unit for each shift during the period from September 1, 2012, through April 12, 2013. In addition I recommend that Respondent be ordered to bargain with the Union over the provision of information regarding the mean and mode hours between the time patients were given their discharge orders and when they actually left Hospital premises and provide such information once an agreement has been reached.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

1. The Respondent, Lenox Hill Hospital, New York, New York, its officers, agents, successors, and assigns, shall

(a) Cease and desist from refusing to bargain collectively with the Union by refusing to furnish it with information that is relevant and necessary to the Union's role as the exclusive representative of Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union, in a timely manner, the following information requested by it on February 22, 27, and April 12, 2013: statistics regarding the number of hours (and/or shifts) for nurses' aides working one-on-one shifts for the 6-month period preceding February 22, 2013; patient census reports from September 1, 2012, through February 22, 2013, for the units named in the Union's February 19 grievance alleging violations of article XXVI of the parties collective-bargaining agreement (the Grievance); the FTE full complement standard (filled and unfilled positions) for registered nurses and nurses' aides for each unit named in the Grievance; the number of times nurses' aides were pulled off units (including their own) to cover one-on-one assignments from September 1, 2012, through February 22, 2013, and the maximum patient census on each unit for each shift during the period from September 1, 2012, through April 12, 2013.

(b) Bargain with the Union over the provision of information regarding the mean and mode hours between the time patients were given their discharge orders and when they actually left Hospital premises and provide such information after an agreement has been reached.

(c) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 22, 2013.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 1, 2014

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with The New York Professional Nurses Union (the Union) by failing and refusing to furnish it with information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our registered nurses and other unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the rights guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL furnish to the Union in a timely manner the information it requested on February 22, 27, and April 12, 2013, specifically to include the following: statistics regarding the number of hours (and/or shifts) for nurse's aides working one-on-one shifts for the 6-month period preceding February 22, 2013; patient census reports from September 1, 2012, through February 22, 2013, for the units named in the Union's February 19 grievance alleging violations of article XXVI of the parties collective-bargaining agreement (the Grievance); the FTE full complement standard (filled and unfilled positions) for registered nurses and nurses' aides for each unit named in the Grievance; the number of times nurses' aides were pulled off units (including their own) to cover one-on-one assignments from September 1, 2012, through February 22, 2013, and the maximum patient census on each unit for each shift during the period from September 1, 2012, through April 12, 2013.

WE WILL bargain with the Union over the provision of information regarding the mean and mode hours between the time patients were given their discharge orders and when they actually left hospital premises and provide such information once an agreement has been reached.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-103901 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.